

## 3001.704

### Subpart 3001.7—Determinations and Findings

#### 3001.704 Content.

The following format shall be used for all determinations and findings (D&Fs), unless otherwise specified in the FAR or the HSAR. The contracting officer is responsible for preparing D&Fs, and requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

Insert specific information indicated in brackets.

#### *Determination and Findings*

Under *[insert citation for appropriate statutory and/or regulatory basis for D&F]*, the Department of Homeland Security, *[insert contracting activity]*, is granted authority to *[insert nature and/or description of the action being approved]*.

#### *Findings*

*[Findings that detail the particular circumstances, facts, or reasoning essential to support the determination.]*

#### *Determination*

*[A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.] [Expiration date of the D&F, if required.]*

*[Signature of authorized official]*

Name and Title

[month, day, and year]

Date

### Subpart 3001.70—Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals

#### 3001.7000 Coordination and approval.

*Documents requiring CPO approval.* Requests shall be prepared in writing by the contracting officer and submitted through the HCA to the CPO for approval.

#### 3001.7001 Content.

The general format at (HSAR) 48 CFR 3001.704 shall be used to provide a justification to support the requested determination, waiver, exception or approval.

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### PART 3002—DEFINITIONS OF WORDS AND TERMS

#### Subpart 3002.1—Definitions

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3002.101 Definitions.

#### Subpart 3002.2—Abbreviations

3002.270 Abbreviations.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, and 48 CFR part 1 and subpart 1.3.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise noted.

#### Subpart 3002.1—Definitions

##### 3002.101 Definitions.

*Chief Information Officer (CIO)* means the Director of the Office of the CIO.

*Chief of the Contracting Office (COCO)* means the individual(s) responsible for managing the contracting office(s) within a Component.

*Chief Procurement Officer (CPO)* means the Senior Procurement Executive (SPE).

*Component* means the following entities for purposes of this chapter:

(1) DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);

(2) Federal Emergency Management Agency (FEMA);

(3) Federal Law Enforcement Training Center (FLETC);

(4) Transportation Security Administration (TSA);

(5) U.S. Coast Guard (USCG);

(6) U.S. Customs and Border Protection (CBP);

(7) U.S. Immigration and Customs Enforcement (ICE); and

(8) U.S. Secret Service (USSS).

*Contracting activity* includes all the contracting offices within a Component and is the same as the term “procuring activity.”

*Contracting officer* means an individual authorized by virtue of position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Homeland Security Acquisition Regulation.

*Head of the Agency* means the Secretary of the Department of Homeland

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Security, or, by delegation, the Under Secretary of Management.

*Head of the Contracting Activity (HCA)* means the official who has overall responsibility for managing the contracting activity. For DHS, the HCAs are:

- (1) Director, Office of Procurement Operations (OPO);
- (2) Director, Office of Selective Acquisitions (OSA);
- (3) Director, Office of Acquisition Management (FEMA);
- (4) Chief, Procurement Division (FLETC);
- (5) Assistant Administrator for Acquisition (TSA);
- (6) Director of Contracting and Procurement (USCG);
- (7) Executive Director, Procurement (CBP);
- (8) Director, Office of Acquisition Management (ICE); and
- (9) Chief, Procurement Operations (USSS).

*Legal counsel* means the Department of Homeland Security Office of General Counsel or Component office providing legal services to the contracting organization.

*Legal review* means review by legal counsel.

*Major system* means, for DHS, that combination of elements that will function together to produce the capabilities required to fulfill a mission need, including hardware, equipment, software, or any combination thereof, but excluding construction or other improvements to real property. A DHS major system is one where the total lifecycle costs for the system are estimated to equal or exceed \$300M (in constant 2009 dollars), or if the Deputy Secretary has designated a program or project as a major system. This corresponds to a DHS Level 1 or 2 capital investment acquisition.

*Micro-purchase threshold* is defined as in (FAR) 48 CFR 2.101, except when (HSAR) 48 CFR 3013.7003(a) applies.

*Senior Procurement Executive (SPE) for the Department of Homeland Security* means the DHS Chief Procurement Officer (CPO), who is the individual appointed pursuant to 41 U.S.C. 1702 to be responsible for management direction of the procurement system of DHS, including implementation of the unique

procurement policies, regulations, and standards of DHS.

*Sensitive Information*, as used in this Chapter, means any information which if lost, misused, disclosed, or, without authorization, is accessed or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Pub. L. 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (6 CFR part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in 49 CFR part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted

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homeland security information handling procedures.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 25767, May 2, 2006; 71 FR 48801, Aug. 22, 2006; 72 FR 1297, Jan. 11, 2007; 73 FR 30318, May 27, 2008; 75 FR 41099, July 15, 2010; 77 FR 50633, Aug. 22, 2012]

### **Subpart 3002.2—Abbreviations**

#### **3002.270 Abbreviations.**

CBCA Civilian Board of Contract Appeals  
CFO Chief Financial Officer  
CIO Chief Information Officer  
COCO Chief of the Contracting Office  
COR Contracting Officer's Representative  
COTR Contracting Officer's Technical Representative  
CPO Chief Procurement Officer  
D&F Determination and Findings  
FOIA Freedom of Information Act  
HCA Head of the Contracting Activity  
J&A Justification and Approval for Other than Full and Open Competition  
KO Contracting Officer  
MD Management Directive  
OCPO Office of the Chief Procurement Officer  
OIG Office of the Inspector General  
OSDBU Office of Small and Disadvantaged Business Utilization  
PCR SBA's Procurement Center Representative  
RFP Request for Proposal  
SBA Small Business Administration  
SBS Small Business Specialist  
SPE Senior Procurement Executive

[72 FR 1297, Jan. 11, 2007, as amended at 77 FR 50633, Aug. 22, 2012]

## **PART 3003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

### **Subpart 3003.1—Safeguards**

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3003.101 Standards of conduct.

3003.101-3 Agency regulations.

#### **Subpart 3003.2—Contractor Gratuities to Government Personnel**

3003.203 Reporting suspected violations of the Gratuities clause.

3003.204 Treatment of violations.

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### **Subpart 3003.3—Reports Of Suspected Antitrust Violations**

3003.301 General.

#### **Subpart 3003.4—Contingent Fees**

3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

#### **Subpart 3003.5—Other Improper Business Practices**

3003.502 Subcontractor kickbacks.

3003.502-2 Subcontractor kickbacks.

#### **Subpart 3003.9—Whistleblower Protections for Contractor Employees**

3003.901 Definitions.

#### **Subpart 3003.10—Contractor Code of Business Ethics and Conduct**

3003.1003 Requirements.

3003.1004 Contract clauses.

AUTHORITY: 5 U.S.C. 301-302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise noted.

### **Subpart 3003.1—Safeguards**

#### **3003.101 Standards of conduct.**

##### **3003.101-3 Agency regulations.**

The United States Office of Government Ethics has promulgated regulations applicable to the entire Executive Branch that address the conduct matters referenced in (FAR) 48 CFR 3.101-3. See 5 CFR vol. 3, ch. XVI, subch. B. The Department of Homeland Security has also issued Management Directive 0480.1, Ethics/Standards of Conduct.

[77 FR 50633, Aug. 22, 2012]

#### **Subpart 3003.2—Contractor Gratuities to Government Personnel**

##### **3003.203 Reporting suspected violations of the Gratuities clause.**

(a) Suspected violations shall be reported to the contracting officer responsible for the acquisition (or the